IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 587 of 1989

Date of Decision: 7.10.2004

GULAMKADAR GULAMHUSEN MANSURI

Versus

JAYABEN WD/O BABUBHAI MANGAL- DAS SHETH

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant MR.SR

MR.Adv.NIKHIL KARIEL
For the Respondent MR.Adv.SANDEEP SHAH

PER: HON'BLE THE CHIEF JUSTICE (ORAL):-
1. This appeal is directed against the award of Motor Accident Claims Tribunal No.4 [Auxiliary], Ahmedabad in M.A.C.P.No.186 of 1985.

2. The facts briefly stated, claimants are widow and minor children of the deceased Babubhai Mangaldas Sheth [61]. On 26.7.1985, at about 10.45 a.m., deceased

went to Fatepura Bus Stand at Sarkhej Road. One AMTS bus

Whether reporters of Local Papers may be allowed to see the Judgment?

bearing route No.37 came and halted at bus stand. It was fully loaded, therefore, deceased could not enter it. Thereafter, AMTS bus bearing route No.31/2 came to the bus stand from Vasana side. It was halted near the bus stand route No.37 in oblique manner. The other passengers and the deceased entered the bus through rear door. When he was on the foot steps, bus started with speed since conductor gave ring signalling for starting the vehicle. It tried to overtake halted bus with short turn. In that process, deceased pressed between two buses, therefore, got seriously injured. He was shifted to nursing home of Dr.Kirit J. Shah, M.D. and then removed to V.S.Hospital. On 29.7.1985 subjected to operation. He suffered multiple fractures of ribs resulting into bleeding in lungs causing difficulty in breathing. After three weeks, he was discharged. He could not be cured and treated by Dr.Rajnikant Naik and other Doctors. He was admitted in his nursing home on 26.9.1985 and operated grafting bone besides plate inserting at the fractured side. Again, on 6.10.85 there was difficulty in breathing, therefore, admitted in V.S.Hospital on 7.10.1985. However, he died on the same day.

3. Consequently, claim for compensation was preferred against the respondents on the ground that bus driver was thoroughly rash and negligent in operating bus, otherwise, accident could be avoided. Opponents resisted the claim denying the facts alleged by the claimants. However, it is admitted that two buses came to the site halted there and were full of passengers. Precise defence is that despite the conductor asking the deceased not to enter the bus, the deceased insisted and succeeded entering the bus, therefor, blame is of the deceased and not of the conductor or bus driver.

4. The Motor Accident Claims Tribunal framed four issues and sought evidence. After receiving evidence, considering submissions advanced by the parties, came to the conclusion that deceased got injured in the accident as alleged. This happened on account of rash and negligent driving of AMTS bus bearing registration GTA 8477 route No.31/2 by its driver. It is also held that deceased died on account of the injuries sustained by him in this accident. Accordingly, compensation of

Rs.1,69,400/- is awarded carrying interest at the rate of 10 % from the date of application till payment. Appellant not satisfied with this award, therefore, this appeal.

5. Shri B.P.Tanna, learned senior counsel for the appellant emphatically submits that finding of the Motor Accident Claims Tribunal that bus driver and conductor were negligent in driving vehicle, is not sustainable if evidence is correctly appreciated. Therefore, finding is liable to be set aside. It is also submitted that looking to the age of the deceased, compensation is excessive. Both submissions have been opposed by Shri Sandeep Shah, learned counsel for the claimants. Since, learned counsel for both the sides have taken diametrically opposite stands, evidence is perused with a view to understand whether findings recorded by the Motor Accident Claims Tribunal on both questions are based on evidence. Having examined evidence, we are of the opinion that conclusions of the Claims Tribunal are based on evidence in the case. The situation is, deceased had not entered into the bus at the relevant time. He was in the foot steps. Therefore, conductor should not have signalled the driver to start the bus. In case the bus was full of passengers and there was no space left for the deceased, conductor should have ensured that deceased did not board the bus and till he was out, should not have signalled the driver to start it. It is duty of the conductor to ensure safety of passengers, particularly, those who are in the process of getting into vehicle. Till all the passengers have entered the bus and the door is closed if bus has door, he should not ask the driver to move the bus. This has not happened in this case, therefoer, rashness and negligence on the part of the driver is established. With regard to compensation, nothing much can be said since it has been settled justly and reasonably taking into consideration the evidence and all aspects of the matter. Multiplier is also properly used.

6. Therefore, we find no merit in this appeal and the same is dismissed.

[Bhawani Singh]
Chief Justice

Date : 7.10.2004 [H.K.Rathod]
Judge

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